

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

1. Sections Affected

R12-4-601
R12-4-602
R12-4-603
R12-4-604
R12-4-605
R12-4-606
R12-4-607
R12-4-609
R12-4-610
R12-4-611

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statutes: A.R.S. §§ 41-1033 for R12-4-601; A.R.S. §§ 41-1003 and 41-1023 for R12-4-602, R12-4-603 and R12-4-604; A.R.S. §§ 17-340 for R12-4-605; A.R.S. §§ 17-314, 17-340 and 41-1092, *et seq.* for R12-4-606; A.R.S. §§ 41-1001(4) through 41-1003 and 41-1092.09 for R12-4-607; A.R.S. §§ 17-234, 38-431.02 and 41-1005(A)(2) for R12-4-609; A.R.S. §§ 17-304(B) and 17-452 for R12-4-610; and A.R.S. §§ 41-1092 through 41-1092.12 for R12-4-611.

3. The effective date of the rules:

July 6, 2004

4. A list of all previous notices appearing in the Register addressing the rules:

Notice of Rulemaking Docket Opening: 8 A.A.R. 2974, July 19, 2002
Notice of Public Information: 9 A.A.R. 396, February 7, 2003
Notice of Public Meeting on Open Rulemaking Docket: 9 A.A.R. 1251, April 18, 2003
Notice of Public Information: 9 A.A.R. 1565, May 23, 2003
Notice of Rulemaking Docket Opening: 9 A.A.R. 3148, July 18, 2003
Notice of Proposed Rulemaking: 10 A.A.R. 4, January 2, 2004.

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mark E. Naugle, Rule & Risk Manager

Address: Arizona Game and Fish Department
2221 W. Greenway Rd., DORR
Phoenix, AZ 85023-4399

Telephone: (602) 789-3289

Fax: (602) 789-3677

6. An explanation of the rules, including the agency's reasons for initiating the rulemaking:

The Arizona Game and Fish Department is amending its rules following the 2001 five-year rule review of Title 12, Chapter 4, Article 6, Rules of Practice Before the Commission. The review, as required by A.R.S. § 41-1056, established a course of action to amend the rules according to Council standards. Subsequent review of these recommendations evaluated their efficacy in practice and enforcement, resulting in the rulemaking as it is submitted in this Notice. The Department has also revised the rule language where necessary to make it consistent with the current require-

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ments for rulemaking language and style, as recommended by G.R.R.C. staff in their courtesy review of the rulemaking.

R12-4-601. Petition for ~~rule~~ Rule or Review of Practice or Policy

- A new subsection (B) will be added to establish guidelines for an individual, including any organization or agency, to request that the Commission review an existing agency practice or substantive policy statement that the petitioner alleges qualifies as a rule, as defined in A.R.S. § 41-1001. The petitioner may request a review of a practice or policy under A.R.S. § 41-1033. Associated amendments to make the rule consistent with the new subsection will be made throughout this rule. The heading of the rule will also be amended to reflect the change in content of the rule.
- The rule will be amended to change the mailing address for the Arizona Game and Fish Department in subsection (E) from 2222 W. Greenway to 2221 W. Greenway Rd.
- The Department will no longer require a petitioner to submit a petition to the Commission before a prescribed number of days in subsection (E), but will instead refer to the requirements for considering a petition under A.R.S. § 41-1033.
- Subsection (G) prescribes that petitions be submitted typewritten and double-spaced on 8 1/2" x 11" paper, or typewritten on a form provided by the Department. This subsection will be revised to allow petitioners to submit applications that are typewritten, computer or word processor printed, or legibly handwritten as well.
- Subsections (G) through (L) will be revised where appropriate to make the petition process and information requirements more customer friendly.
- To avoid confusion for the public, subsections (I)(2) and (3) will be revised to clarify that the A.A.C. number is the number of the rule.
- Subsection (L)(2) will be amended to authorize a public agency to submit a petition signed by the agency head's designee if the agency head is unavailable.
- Existing subsection (L) has been found to be inconsistent with the objective of the rule. R12-4-601 prescribes the petition process for requesting rule changes, while existing subsection (L) addresses the separate issue of road or area closures. The provisions of subsection (L) would be more logically addressed in R12-4-610, thus the Department will delete subsection (L) from R12-4-601 and move its provisions to R12-4-610.

R12-4-602. Written ~~comment on proposed rules~~ Comment on Proposed Rules

- The rule currently requires that all written comments include the address of the sender and the identification of any group or organization that he or she represents. These provisions have been found to be inconsistent with what the authorizing and implementing statutes require, and it is the view of the Department that requiring this information has the potential to limit the number of comments the Agency receives on a proposed rule change. The Department's desire is to encourage comments from the public on proposed rulemaking, and it therefore will amend the opening paragraph of the rule to make it voluntary for a person to supply address and organizational information when making written comments.

R12-4-603. Oral Proceedings Before the Commission

- The Department will amend the rule to clarify that the provisions of the rule apply to any matter or proceeding before the Commission. A new subsection (A) will be added to define "matter" or "proceeding" as "any contested case, appealable agency action, rule or review petition hearing, rulemaking proceeding, or any public input at a Commission meeting."
- A new subsection (D) will be added as follows:
 - D. The Commission authorizes the Director to continue a scheduled proceeding to a later Commission meeting. To request a continuance, a petitioner shall:
 - 1. Deliver the request to the Director no later than 24 hours before the scheduled proceeding;
 - 2. Demonstrate that the proceeding has not been continued more than twice; and
 - 3. Demonstrate good cause for the continuance.

R12-4-604. ~~Ex parte communication~~ Parte Communication

- Subsection (A)(1) will be amended to include a personal aide to a Commissioner as a "person outside the Commission", and to make it consistent with the rest of the rule.
- Subsection (A)(2) has been found to be unclear, confusing, and too limited in scope. In addition to simplifying and clarifying the definition for *ex parte* communication, the definition will be expanded to include any communication with the Commission that is not part of the public record and for which no reasonable prior written notice has been given to all interested parties.
- Subsection (B) has been found to be unclear, confusing, and too limited in scope. In addition to simplifying and clarifying the provisions of subsection (B), appealable agency action, as defined in A.R.S. § 41-1092, will be added to the types of proceedings for which *ex parte* communication is restricted.
- Subsections (C), (D), and (E) have been found to be unclear and confusing, and the Department will amend the rule to clarify and simplify these provisions of the rule.
- The phrase "to the extent consistent with the interests of justice..." in subsection (D) has been found to be vague, and the Department will amend the rule to revise this phrase to read, "to the extent consistent with equity and fairness."

R12-4-605. Standards for ~~revocation and denial of right to obtain license~~ Revocation, Suspension, or Denial of a License

- The heading of the rule has been found to be inaccurate and the Department will amend the rule to revise it to read

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“Standards for ~~revocation and denial of right to obtain license~~ Revocation, Suspension, or Denial of a License”

- A.R.S. § 17-340(A)(6) allows for the revocation or suspension of hunting, fishing and trapping licenses for a violation of A.R.S. §§ 17-303 or 17-304. These statutes deal with trespassing on game refuges or other public and private areas closed to hunting, trapping, or fishing. R12-4-605 currently does not reference violations of these statutes as offenses for which the Commission shall hold hearings where it may revoke or suspend hunting, fishing and trapping licenses, and the rule will be amended to add these types of violations to the list of revocable offenses.
- Subsection (A)(2) currently prescribes that the Commission shall hold a hearing and may revoke or suspend all or any of the hunting, fishing and trapping licenses of any person, when that person has been convicted of destroying, injuring, or molesting livestock, growing crops, personal property, notices or signboards, or other improvements while hunting, fishing or trapping. The “growing crops” portion of this subsection is unclear and inconsistent with A.R.S. § 17-340(A)(3), which specifies that damaging or destroying growing crops is a revocable offense. The Department will amend the rule to make it clear that damaging or destroying growing crops is a revocable offense.
- Subsection (A) has been found to be unclear and inconsistent with the intent of the rule. The Department will amend the rule to revise subsection (A) as follows:
 - A. ~~Pursuant to Under A.R.S. §§ 17-340 and 17-362, the Commission shall hold a hearing and may revoke, or suspend, or deny all or any of the hunting, fishing, or and trapping license licenses of any person when that person for an individual who has been convicted of any of the following offenses:~~
 1. Killing or wounding a big game animal during a closed season or possessing a big game animal taken during a closed season. Conviction for possession of a road-kill ~~animals or animals causing animal or an animal that was engaged in~~ depredation ~~shall not be~~ is not considered “possessing during a closed season” ~~relevant to for the purposes of this subsection.~~
 2. Destroying, injuring, or molesting livestock, ~~growing crops, or damaging or destroying~~ personal property, notices or signboards, ~~or other improvements, or growing crops~~ while hunting, fishing, or trapping.
 3. Careless use of ~~firearms a firearm~~ while hunting, fishing, or trapping ~~which has resulted that results in the injury or death to of any person, when if the act of discharging the firearm was deliberate.~~
 4. Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.
 5. Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304.
 6. Unlawfully posting state or federal lands in violation of A.R.S. § 17-304(B).
 - The term “convincing” when referring to evidence has been found to be too limited in scope in subsection (B). The Department will amend the rule to replace the term with the more apt “sufficient”.
 - Subsection (B) has been found to be unclear and inconsistent with the intent of the rule. The Department will amend the rule to revise subsection (B) as follows:
 - B. ~~Pursuant to A.R.S. § 17-340, the Commission may hold a hearing and may revoke or suspend all or any of the hunting, fishing and trapping licenses of any person when that person has been convicted of any of the following offenses:~~ Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license if the Department recommends revocation, suspension, or denial of the license for an individual convicted of any of the following offenses:
 - A portion of subsection (B)(1)(b) has been found to be unclear and redundant, and the Department will amend the rule to revise subsection (B)(1)(b) as follows: “The unlawful taking was willful and deliberate ~~and not accidental.~~”
 - Subsection (B)(3) has been found to be unclear, and the Department will amend the rule to revise subsection (B)(3) as follows:
 3. ~~Unlawfully taking other wildlife species, when there is convincing if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the act of taking was willful and deliberate and showed disregard for the state wildlife laws.~~
 - Subsection (B)(4) has been found to be inconsistent with A.R.S. § 17-340(A)(4), and the Department will amend the rule to revise subsection (B)(4) as follows:
 4. Littering a public hunting or fishing area while taking wildlife, ~~when there is convincing if sufficient evidence, which may or may not have been introduced in the court proceeding that the amount of litter was substantial, indicates that an individual littered the area, the amount of litter discarded was unreasonably large, and that the person individual convicted made no reasonable effort to dispose of the litter in a lawful manner.~~
 - Subsection (B)(6) has been found to be unclear, and the Department will amend the rule to revise subsection (B)(6) as follows:
 6. Any ~~other~~ violation for which a license can be revoked ~~pursuant to under A.R.S. § 17-340, when that if the person has been convicted of other a revocable offenses offense within the past three years, and that person’s actions show disregard for the state’s wildlife laws.~~
 - The Department will add a new subsection (7) as follows:
 7. Violations of A.R.S. §§ 17-306 for unlawful possession of wildlife.
 - Subsection (C) has been found to be unclear and inconsistent with the intent of the rule. The Department will amend the

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rule to revise subsection (C) as follows:

C. ~~The~~ Under A.R.S. §§ 17-238, 17-362, 17-363, 17-364, and 17-340, if the Department has made a recommendation to the Commission for license revocation, ~~the Commission may~~ shall hold a hearing and may revoke or suspend ~~all or any of the hunting, fishing and trapping licenses of any person fur-dealer, guide, taxidermy, or special license (as defined in R12-4-401)~~ in any other case where license revocation is authorized by law.

R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

- The authorizing statutes of this rule also refer to suspension of a license. Therefore, amendments will be made throughout this Section to establish guidelines for the suspension of licenses.
- R12-4-606(A) currently states that the Director may commence proceedings for the Commission to revoke or deny the right to obtain a license under A.R.S. § 17-340 and in R12-4-605. The Director may also commence proceedings for civil damages under A.R.S. § 17-314. Under R12-4-605, however, this authority is expressly given to the Commission and not the Director. R12-4-606 has therefore been found to be inconsistent with R12-4-605. The rule is also too limited in scope, in that it does not refer to all statutes under which a license may be revoked or denied. The Department's rulemaking will revise subsection (A) to correct the problem.
- Subsection (B) currently states in part that the respondents in a hearing concerning license revocation, or denial of right to obtain a license shall limit their testimony to any facts that show why the license should not be revoked or denied. Guilt or innocence of the violation charged shall not be an issue in the proceeding. The phrase "guilt or innocence of the violation" has been found to be vague, and the Department will amend the rule to revise this subsection to make it clear that what is intended is that the Commission does not have the authority to consider or change the court conviction.
- Subsection (B) also currently states in part that the Commission shall conduct hearings concerning license revocations or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. § 41-1061 *et seq.* The reference to A.R.S. § 41-1061 has been found to be incorrect, and the Department will amend the rule to change the reference to A.R.S. Title 41, Chapter 6, Article 10.
- Subsection (C) currently states in part that the respondent waives the right to be heard if the respondent is not present at the hearing on the date, time, and location noticed, and no further opportunity to be heard will be provided except under R12-4-607. For clarification purposes, the Department will amend the rule to specify that the "notice" is the Notice of Hearing required by A.R.S. § 17-340(D).
- Subsection (D) currently states in part that the Department shall supply the respondent with a copy of all documents used by the Commission in reaching its decision. This statement has been found to be vague and the Department will amend the rule to make the following clarifications:
~~The~~ With the notice of hearing required by A.R.S. § 17-340(D), the Department shall supply the respondent with a copy of ~~all documents used by~~ each document provided to the Commission for use in reaching ~~its~~ a decision.
- Subsection (E) currently allows for any party in a case before the Commission to apply to the Commission for the issuance of subpoenas, and the rule states in part that the Commission chair may issue the subpoenas. This statement has been found to be vague and the Department will amend the rule to make the following clarification:
E. Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any hearing or deposition. Not later than 10 calendar days before the hearing or deposition, the party shall file a written application ~~setting forth~~ that provides the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time, and place of the hearing or deposition. The Commission chair ~~may~~ has the authority to issue the subpoenas.
- Subsection (E)(1) currently states in part that a party shall serve a subpoena as in the Arizona Rules of Civil Procedure, Rules 4 and 5. In addition to the inconsistency issue addressed in Part 4 of this report, this statement has been found to be vague, and the Department will amend the rule to make the following clarification:
A party shall ~~serve~~ have a subpoena served as prescribed in the Arizona Rules of Civil Procedure, ~~Rules 4 and 5~~ Rule 45.
- Subsection (E)(1) currently cross-references the Arizona Rules of Civil Procedure, Rules 4 and 5. This cross-reference has been found to be incorrect, and the Department will amend the rule to change the reference to the Arizona Rules of Civil Procedure, Rule 45.

R12-4-607. Rehearing or Review of Commission Decisions

- The Department has determined that subsection (A), which currently provides reference definitions for "contested case" and "party," is too narrow in scope. The Department will amend the rule to add a reference definition for "appealable agency action," as defined in A.R.S. § 41-1092(3).
- Subsection (C) currently states in part that the Commission may require the filing of written briefs on any issue raised in a motion or response, and may provide for oral argument. The intent of this statement has been found to be unclear, and the Department will amend the rule to make the following clarifications:
C. A party may amend a motion for rehearing or review at any time before the Commission rules upon the motion. An opposing party has ~~40~~ 15 calendar days after service to respond to the motion or the amended motion. The Commission ~~may~~ has the authority to require ~~the filing of~~ that the parties file written briefs on any issue raised in a motion or response, and ~~may provide~~ allow for oral argument.
- Subsection (D) currently states in part that "The Commission may grant rehearing or review for any of the following

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causes materially affecting the moving party's rights." The intent of this statement has been found to be unclear, and the Department will amend the rule to make the following clarifications:

D. The Commission ~~may~~ has the authority to grant rehearing or review for any of the following causes materially affecting the moving party's rights:

- Subsection (F) currently states in part that not later than 10 calendar days after a decision is rendered, the Commission may order a rehearing or review for any reason for which it might have granted relief on motion of a party. The provision for 10 calendar days is inconsistent with the 15 day requirement in A.R.S. § 41-1092.09, and the Department will amend the rule to change the time-frame to 15 calendar days, as prescribed by A.R.S. § 41-1092.09.
- Subsection (G) currently states in part that the Commission may permit reply affidavits. The intent of this statement has been found to be unclear, and the Department will amend the rule to make the following clarifications:

G. When a motion for rehearing or review is based upon affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 10 calendar days after ~~such~~ service, serve opposing affidavits. The Commission may extend this period for no more than 20 calendar days for good cause shown or by written stipulation of the parties. The Commission ~~may~~ has the authority to permit reply affidavits.

R12-4-609. Commission Orders

- The provisions of subsection (A)(1) have been found to be unclear and too limited in scope, and the Department intends to initiate rulemaking to amend subsection (A)(1) as follows:
 1. At least 20 calendar days ~~prior to~~ before a meeting where the Commission will consider a Commission ~~order~~ Order, the Department shall ensure that a public meeting notice and agenda for the public meeting is posted in accordance with A.R.S. § 38-431.02. The Department shall also issue a public announcement notice of the proposed recommended Commission order Order to print and ~~electronic~~ electronic media ~~in accordance with A.R.S. § 38-431.02 at least 20 calendar days before the meeting.~~
- The provisions of subsection (A)(2) have been found to be unclear and the Department intends to initiate rulemaking to amend subsection (A)(2) as follows:
 2. The ~~Department announcement~~ shall ensure that the public meeting notice and agenda contains ~~contain~~ the date, time, and location of the Commission meeting where ~~these recommendations~~ the Commission Order will be considered and a statement that the public may attend and present written comments at or before the hearing meeting.
- The provisions of subsection (A)(3) have been found to be unclear, and the Department intends to initiate rulemaking to amend subsection (A)(3) as follows:
 3. The ~~Department announcement~~ shall ~~also state~~ also ensure that the public meeting notice and agenda states that cop- ~~ies a copy of the proposed Commission Order is~~ orders will be available for public inspection at the Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 calendar days ~~prior to~~ before the meeting. The Commission may make changes to the recommended Commission Order at the Commission meeting.

R12-4-610. Petition for Requesting Closure of Hunting, Fishing, or Trapping Privileges on State or Federal Lands Peti- tions for the Closure of State or Federal Lands to Hunting, Fishing, or Trapping, or the Operation of Motor Vehi- cles

- The heading of the rule has been found to be too narrow in scope. To fully address the provisions of the rule, the Department will amend the heading as follows: "Petitions Petition for Requesting the Closure of State or Federal Lands to Hunting, Fishing, or Trapping Privileges on State or Federal Lands or the Operation of Motor Vehicles."
- Subsections (E) and (E)(1) have been found to be vague and too narrow in scope to meet the objective of the rule. The Department will amend the rule to revise subsections (E) and (E)(1) as follows:
 - E. ~~Within 15 working days of a petition's filing, the Department shall determine whether the petition meets the requirements prescribed in this rule and R12-4-110.~~
 1. ~~If the petition meets the requirements prescribed in this rule and R12-4-110, and alternate solutions cannot be found which are acceptable to the petitioner, the Department shall place the petition on the agenda of an open meeting of the Arizona Game and Fish Commission according to the schedule designated in subsection (D) of this rule. The petitioner shall have the right to present oral testimony in support of the petition at that meeting, according to the provisions of R12-4-603.~~
 - E. Within 15 business days after the petition is filed, the Department shall determine whether the petition complies with this Section, R12-4-110, and A.R.S. § 17-452. Once the Department determines that the petition meets these requirements, and if the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection (D), shall place the petition on the agenda for the Commission's next open meeting and provide written notice to the petitioner of the date that the Commission will consider the petition.
 1. The petitioner may present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions of R12-4-603.
- Subsection (E)(2) has been found to be vague and too narrow in scope to meet the objective of the rule. The Department will amend the rule to revise subsection (E)(2) as follows:
 2. ~~If the petition does not meet the requirements prescribed in this rule and R12-4-110, the Department shall return one copy of the petition as filed to the petitioner with reasons why it does not meet the requirements. The Department~~

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~~shall not place the petition on an agenda of an open meeting with the Commission.~~

2. If a petition does not meet the requirements prescribed in this Section, R12-4-110, and A.R.S. § 17-452, the Department shall return one copy of the petition as filed to the petitioner with the reasons why the petition does not meet the requirements, and not place the petition on a Commission agenda.

3. If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 41-1092.03.

- Subsections (F) through (J) have been found to be vague and too narrow in scope to meet the objective of the rule. The Department will amend the rule to combine existing subsections (F) through (J) into new subsection (F) with the following revised rule language:

F. The petitioner shall submit a petition that:

1. Is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced on 8 1/2 x 11" paper;

2. Has a concise map that shows the specific location of the proposed closure;

3. Has the title "Petition for the Closure of Hunting, Fishing, or Trapping Privileges on Public Land" or "Petition for the Closure of Public Lands to the Operation of Motor Vehicles" at the top of the first page;

4. Is in four parts, with titles designating each part as prescribed in this subsection;

5. Has a "Part 1" with the title "Identification of Petitioner" and contains the following information, if applicable:

a. If the petitioner is the leaseholder of the area proposed for closure, the name, lease number, mailing address, and home telephone number of the petitioner;

b. If the petitioner is anyone other than the leaseholder, the name, mailing address, and telephone number of the leaseholder; the name, mailing address, and telephone number of the petitioner; and the name of each group or organization or organizations that the petitioner represents; or

c. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative regarding the petition.

6. Has a "Part 2" with the title "Request for Closure" and contains all of the following information, if applicable:

a. The type of closure requested: either a hunting, fishing, or trapping closure, or closure to the operation of motor vehicles;

b. A complete legal description of the area to be closed;

c. The name or identifying number of any road and the portion of the road affected by the closure; and

d. The dates proposed for the closure:

i. If the closure is to the operation of motor vehicles, the actual time period of the closure (up to 5 years), and whether or not the closure is seasonal; or

ii. If the closure is for hunting, fishing, or trapping, whether or not the request is for a permanent closure or for some other period of time.

7. Has a "Part 3" with the title "Reason for Closure" and contains all of the following information, if applicable:

a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);

b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition;

c. Each individual or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;

d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of each written comment or document of concurrence authorized under A.R.S. § 17-452(A), received by the petitioning agency; and

e. A proposed alternate access route, under R12-4-110.

8. Has a "Part 4" with the title "Dates and Signatures" and contains the following:

a. The original signature of the private party or the official contact named under subsection (F)(5)(a) or (F)(5)(b) of this Section, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and

b. The month, day, and year when the petition was signed.

R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

The Department intends to add a new Section to the Article 6 rules to prescribe a process for petitions for Commission Hearings:

A. If no administrative remedy exists in statute, rule or policy, an aggrieved individual may request a hearing before the Commission by following the provisions of this Section.

B. Any individual who requests a hearing under this Section shall submit a petition as prescribed in this Section before the request for a hearing will be considered by the Commission.

C. A petitioner shall file the original and one copy of the petition with the Arizona Game and Fish Department, Director's

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Office, 2221 W. Greenway Rd., Phoenix, Arizona 85023.

- D. The petitioner shall ensure that the petition is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced on 8½" x 11" paper. The petitioner shall place the title "Petition for Hearing by the Arizona Game and Fish Commission" at the top of the first page. The petition shall include the items listed in subsections (E) through (H). The petitioner shall present the items in the petition in the order in which they are listed in this Section.
- E. The petitioner shall ensure that the title of Part 1 is "Identification of Petitioner" and that Part 1 includes the following information, as applicable:
1. If the petitioner is a private person, the name, mailing address, telephone number, and e-mail address (if available) of the petitioner;
 2. If the petitioner is a private group or organization, the name and address of the organization; the name, mailing address, telephone number, and e-mail address (if available) of one person who is designated as the official contact for the group or organization; the number of individuals or members represented by the private group or organization, and the number of these individuals or members who are Arizona residents. If the petitioner prefers, the petitioner may provide the names and addresses of all members; or
 3. If the petitioner is a public agency, the name and address of the agency and the name, title, telephone number, and e-mail address (if available) of the agency's representative.
- F. The petitioner shall ensure that the title of Part 2 is "Statement of Facts and Issues." Part 2 shall contain a description of the issue to be resolved, and a statement of the facts relevant to resolving the issue.
- G. The petitioner shall ensure that the title of Part 3 is "Petitioner's Proposed Remedy." Part 3 shall contain a full and detailed explanation of the specific remedy the petitioner is seeking from the Commission.
- H. The petitioner shall ensure that the title of Part 4 is "Date and Signatures." Part 4 shall contain:
1. The original signature of the private party or the official contact named in the petition, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
 2. The month, day, and year that the petition is signed.
- I. If a petition does not comply with this Section, the Director shall return the petition and indicate why the petition is deficient.
- J. After the Director receives a petition that complies with this Section, the Director shall place the petition on the agenda of a regularly-scheduled Commission meeting.
- K. If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same matter, unless the petitioner presents new evidence or reasons for considering the subsequent petition.
- L. This Section does not apply to the following:
1. A matter related to a license revocation or civil assessment; or
 2. An unsuccessful hunt permit-tag draw application, where there was no error on the part of the Department.
7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
Not applicable
8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:
Not applicable
9. A summary of the economic, small business, and consumer impact:
The rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 Five-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. Therefore, the rulemaking in general will not create a significant economic, small business, or consumer impact. The amendments to R12-4-602 and R12-4-609 will not create any economic impact.
10. A description of the changes between the proposed rule, including supplemental notices, and final rule:
The Department has made grammatical and stylistic changes to accommodate public comment in subsection (D), of R12-4-601. The Department will no longer require a petitioner to submit a petition to the Commission before a prescribed number of days, but will instead refer to the requirements for considering a petition under A.R.S. § 41-1033. This will also lessen the burden on those persons who choose to petition the Commission for policy changes. The Department has also revised the rule language where necessary to make it consistent with other rules and the current requirements for rulemaking language and style.
11. A summary of the comments made regarding the rules and the agency response to them:
The Department received one written comment regarding this rulemaking.
Written Comment: The proposed amendments to R12-4-601(E) place a burden on the petitioner not intended by its authorizing statute, A.R.S. § 41-1033. The statute allows a person to petition a state agency for review of an existing practice or substantive policy, and requires that the agency accept or deny the petition within sixty days of receipt. The statute places no restriction on submission, yet the rule requires a petitioner to submit a petition within a certain

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time-frame relative to a Game and Fish Commission meeting. Also, verbiage in the rule attempts to evade the sixty-day response deadline.

Agency Response: The Department will amend the rule to eliminate the filing deadline for a petition to be considered by the Commission, and will instead refer to the requirements for considering a petition under A.R.S. § 41-1033.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Any material incorporated by reference and its location in the text:

None

14. Have the rules been previously made as emergency rules and, if so, whether the text was changed between the making as an emergency and the making of the final rules:

The rules have not been previously made as emergency rules.

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

Section

R12-4-601.	Petition for rule Rule or Review of Practice or Policy
R12-4-602.	Written comment on proposed rules <u>Comments on Proposed Rules</u>
R12-4-603.	Oral Proceedings Before the Commission
R12-4-604.	Ex parte communication <u>Parte Communication</u>
R12-4-605.	Standards for revocation and denial of right to obtain license <u>Revocation, Suspension, or Denial of a License</u>
R12-4-606.	Proceedings for License Revocation, <u>Suspension, or Denial of Right to Obtain a License, and Civil Damages</u>
R12-4-607.	Rehearing or Review of Commission Decisions
R12-4-609.	Commission Orders
R12-4-610.	Petition for Requesting Closure of Hunting, Fishing, or Trapping Privileges on State or Federal Lands <u>Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles</u>
R12-4-611.	<u>Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy</u>

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

R12-4-601. ~~Petition for rule~~ Rule or Review of Practice or Policy

A. Any ~~person~~ individual, including any organization or agency, requesting that the Commission ~~adopt~~ make, amend, or repeal a rule, shall submit a petition as prescribed in this ~~rule~~ Section ~~before such request may be considered by the Commission.~~

B. Any individual, including any organization or agency, requesting that the Commission review an existing Department practice or substantive policy that the petitioner alleges to constitute a rule (as defined in A.R.S. § 41-1001) under A.R.S. § 41-1033, shall submit a petition as prescribed in this Section.

~~**B.C.** A petition may~~ petitioner shall not address more than one rule, practice, or substantive policy in the petition.

~~**C.D.** Once~~ If the Commission has considered and denied a petition, and a petitioner submits a petition submitted within the next year ~~which that~~ addresses the same substantive issue, the petitioner shall be accompanied by provide a written statement ~~containing that contains~~ any reason not previously considered ~~which the petitioner believes should cause the Commission to reconsider its by the Commission in making a decision.~~

~~**D.E.** The A~~ petitioner shall submit an original and one copy of a petition shall be filed with to the Arizona Game and Fish Department, Director's Office, 2222 2221 West Greenway Rd., Phoenix, Arizona 85023. A petition shall be filed 30 calendar days prior to a scheduled Commission meeting in order to be submitted to the Commission at that meeting. Petitions received after that time shall be submitted to the Commission at the following regularly-scheduled open meeting. The date the petition is considered by the Commission in open meeting shall be considered the date of submission of a petition. The Commission shall render a decision on the petition as required by A.R.S. § 41-1033.

~~**E.F.** Within five working days of a petition's filing after a petition is submitted,~~ the Director shall determine whether the petition ~~meets the requirements prescribed in~~ complies with this ~~rule~~ Section.

1. If the petition ~~meets the requirements prescribed in~~ complies with this ~~rule~~ Section, the Director shall place the petition on the a Commission open meeting agenda of an open meeting of the Commission according to the schedule designated in subsection (D) of this rule. The petitioner shall have the right to may present oral testimony in support of

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~~the petition at that meeting, according to the provisions of by complying with R12-4-603, Oral proceedings before the Commission.~~

2. ~~If the a petition does not meet the requirements prescribed in comply with subsections (G) through (L) of this rule Section, the Director shall return the a copy of the petition as filed to the petitioner with reasons and indicate in writing why it the petition does not meet the requirements of this rule comply with this Section. The Director will shall not place the petition on an a Commission agenda for open meeting of the Commission. The Department shall maintain the original petition shall remain on file with the Department for five years to be considered in the course of the normal rules review and consider the petition as a comment during the five-year review process.~~

~~**F.G.** Petitions shall be submitted typewritten typewritten, computer or word processor printed, or legibly handwritten, and double-spaced, on 8½" x 11" paper; or typewritten, computer or word processor printed, or legibly handwritten on a form provided by the Department. The title shall appear at the top of the first page and shall be: "Petition for Rule to Arizona Game and Fish Commission" be centered at the top of the first page and appear as "Petition to the Arizona Game and Fish Commission". The petition shall be in five parts, with headings designating each part as prescribed in subsections (G) through (K) of this rule. The petition shall include the items listed in subsections (H) through (L). The items in the petition shall be presented in the order in which they are listed in this Section.~~

~~**G.H.** The title of Part 1 shall be headed "Identification of Petitioner". The title shall be centered at the top of the first page of this part. Part 1 shall contain:~~

1. ~~When If the petitioner is a private person individual, Part 1 shall contain the name, mailing address, and phone telephone number of the petitioner; ;~~
2. ~~If the petitioner is a private group or organization, Part 1 shall contain the name and address of the group or organization, and; the name, mailing address, and phone telephone number of one person an individual who is designated as the representative and or official contact relative to the petition. for the petitioner; Part 1 shall also state how many members are represented and how many of these members are the total number of individuals, and the number of Arizona residents represented by the petitioner; ; or If petitioner prefers, the names and addresses of all members may be given. individuals represented by the petitioner; or~~
3. ~~If the petitioner is a public agency, Part 1 shall contain the name and address of the agency and the name, title, and telephone number of the agency's representative relative to the petition.~~

~~**H.I.** The title of Part 2 shall be headed "Request for Rule" or "Request for Review," as applicable. The title shall be centered at the top of the first page of this part. Part 2 shall contain; one of the following:~~

1. ~~If the request petition is for adoption of a new rule, a statement of that fact to this effect, followed by the title heading and specific language of the proposed rule; ;~~
2. ~~If the request is for amendment of a current rule, a statement of that fact to this effect, followed by the Arizona Administrative Code (A.A.C.) number of the current rule proposed for amendment, the heading and title of the rule being proposed for amendment. This shall be followed by the specific, clearly readable language of the current rule; any indicating language to be deleted shall be struck out but clearly readable with strikeouts, and any language to be added by the proposed amendment shall be underlined. with underlining;~~
3. ~~If the request is for repeal for of a current rule, a statement of to this fact effect, followed by the Arizona Administrative Code (A.A.C.) number of the rule proposed for repeal and title the heading of the rule being proposed for repeal. or;~~
4. ~~If the request is for review of an existing agency practice or substantive policy statement that the petitioner alleges qualifies as a rule (as defined in A.R.S. § 41-1001), a statement to this effect, followed by the practice or policy number, if any, the practice or policy heading, if any, or a brief description of the practice or policy subject matter.~~

~~**I.J.** The title of Part 3 shall be headed "Reason for Rule the Petition". The title shall be centered at the top of the first page of this part. Part 3 shall contain:~~

1. ~~The reason why the petitioner believes the rule should be considered rulemaking or review of a practice or policy is necessary;~~
2. ~~Any statistical data or other justification supporting the reasons for the rule rulemaking or review of the practice or policy, with clear reference to any exhibits which may be that are attached to or included with the petition; ;~~
3. ~~An identification of what persons any individuals or segment of the public special interest groups the petitioner believes would be impacted by the rule or a review of the practice or policy, and how they would be impacted; and~~
4. ~~If the petitioner is a public agency, Part 3 shall also contain a summary of issues raised in any public meeting or hearing relative to regarding the petition, or any written comments offered by the public.~~

~~**J.K.** The title of Part 4 shall be headed "Statutory Authority". The title shall be centered at the top of the first page of this part. In Part 4, the petitioner shall contain an identification of identify any statute which the petitioner believes gives that authorizes the Commission the authority to adopt make the rule, if known, or cite to A.R.S. § 41-1033 if the petition relates to review of an existing practice or substantive policy statement.~~

~~**K.L.** The title of Part 5 shall be headed "Date and Signature". The title shall be centered at the top of the first page of this part. Part 5 shall contain:~~

1. ~~The An original signature of private party the representative or the official contact, if the petitioner is a private group~~

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- ~~or organization or private individual~~ named ~~pursuant to subsection~~ under subsections (G)(H)(1) or (H)(2); or
2. If the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
 3. The month, day, and year that ~~person signed~~ the petition is signed.
- E.** ~~When a petition is made by a land management agency for restrictions on motor vehicle use as pursuant to A.R.S. § 17-451 through A.R.S. § 17-548, the petition shall include:~~
1. ~~Within the specific language of the proposed rule, a legal description of the area to be closed;~~
 2. ~~Within the specific language of the proposed rule, the name or identifying number of any road and the portion thereof to be specifically closed.~~
 3. ~~Within the "Reason for Rule", the inclusive dates proposed for such closure, and whether the agency intends to re-petition for renowned closure at closure's expiration;~~
 4. ~~Within the "Reason for Rule", a general identification of any valid licensees and permittees, pursuant to A.R.S. § 17-455(A)(2), or explanation of method for identification of such valid licensees and permittees within the closed area.~~

R12-4-602. Written ~~comment on proposed rules~~ Comments on Proposed Rules

Any ~~person~~ individual may submit written statements, arguments, data, and views on proposed rules ~~which that~~ that have been filed with the Secretary of State ~~pursuant to under~~ A.R.S. § 41-1022. An individual who submits written comments to the Commission may voluntarily provide their name and mailing address. In order to To be placed into the rulemaking record and considered by the Commission in its for a final decision, such the individual submitting the written ~~comment~~ comments shall ensure that they:

1. ~~Contain the name and address of the sender;~~
2. ~~Be Are received prior to before~~ or on the closing date for written comments, as published by the Secretary of State in the Arizona Administrative Register;
3. ~~Indicate, if representing~~ expressed on behalf of a group or organization, whether the views expressed are the official position of ~~such the~~ the group or organization, ~~how many members the number of individuals represented are represented,~~ types of membership available, and number of Arizona residents in each membership category; and
4. ~~Be Are submitted to the person employee~~ designated by the Department as the agency contact person to receive written comments, as published in the Arizona Administrative Register.

R12-4-603. Oral Proceedings Before the Commission

A. For the purposes of this Section, "matter" or "proceeding" means any contested case, appealable agency action, rule or review petition hearing, rulemaking proceeding, or any public input at a Commission meeting.

AB. ~~The Commission may, at its discretion or as required by the provisions of A.R.S. § 41-1023, allow an oral proceedings proceeding on any matter. At an oral proceedings proceeding:~~

1. ~~The Chair is responsible for the conduct of conducting the proceeding, and anyone wishing. If an individual wants to speak, the individual shall first request and be granted permission by the Chair.~~
2. ~~When necessary or appropriate~~ Depending on the nature of the proceeding, the Chair may administer an oath to a witness before receiving testimony.
3. ~~The Chair may cause order the removal of any persons individual who conduct themselves in a disruptive or disrespectful manner is disrupting the proceeding.~~
4. ~~The Based on the amount of time available, the~~ Chair may limit the number of presentations or the time for testimony upon regarding a particular issue; and may shall prohibit irrelevant, or immaterial, or repetitive testimony.
5. Technical rules of evidence do not apply to an oral proceeding, and no informality in any proceeding or in the manner of taking testimony invalidates any order, decision, or rule made, approved or confirmed by the Commission.

B.C. ~~The Commission authorizes the Director to designate a hearing officer for oral proceedings to take public input on proposed rulemaking. The hearing officer has the same authority as the Chair in conducting oral proceedings, as provided in this Section.~~

D. The Commission authorizes the Director to continue a scheduled proceeding to a later Commission meeting. To request a continuance, a petitioner shall:

1. Deliver the request to the Director no later than 24 hours before the scheduled proceeding;
2. Demonstrate that the proceeding has not been continued more than twice; and
3. Demonstrate good cause for the continuance.

R12-4-604. ~~Ex parte communication~~ Parte Communication

A. For purposes of this Section:

1. "Person Individual outside the Commission" means any person individual other than a Commissioner, personal aide to a Commissioner, Department employee, or consultant of the Commission, or an attorney representing the Commission.
2. "Ex parte communication" means an any oral or written communication with the Commission that is not on part of the public record with respect to and for which no reasonable prior written notice has been given to all interested parties is not given.

B. In any contested case or proceeding (as defined in A.R.S. § 41-1001) or proceeding or appealable agency action (as

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defined in A.R.S. 41-1092) before the Commission, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure, the following prohibitions apply to ex parte communication:

1. ~~No~~ An interested ~~person~~ individual outside the Commission shall not make or knowingly cause to be made to any Commissioner, Commission hearing officer, personal aide to a Commissioner, ~~or other~~ Department employee, or consultant who is or may reasonably be expected to be involved in the ~~decisional~~ decision-making process of the proceeding, an ex parte communication relevant to the merits of the proceeding;
 2. ~~No~~ A Commissioner, Commission hearing officer, personal aide to a Commissioner, ~~or other~~ Department employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall not make or knowingly cause to be made to any interested person outside the Commission an ex parte communication relevant to the merits of the proceeding.
- C. A Commissioner, Commission hearing officer, personal aide to a Commissioner, ~~or other~~ Department employee, or consultant who is or may be reasonably expected to be involved in the decisional process of the proceeding, who receives, makes, or knowingly causes to be made a communication prohibited by this rule subsections (B)(1) or (B)(2) of this Section, shall place on the public record of the proceeding and serve on all interested parties to the proceeding:
1. All such written communications A copy of each written communication;
 2. Memoranda stating the substance of all such oral communications A memorandum stating the substance of each oral communication; and
 3. All written responses, and memoranda stating the substance of all oral responses, to the communications described in (C)(1) and (2) A copy of each response and memorandum stating the substance of each oral response to any communication governed by subsections (C)(1) and (C)(2).
- D. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Commission or its hearing officer, to the extent consistent with ~~the interests of justice and the policy of the underlying statutes and rules, equity and fairness,~~ may require the party to show cause why the claim or interest in proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected ~~on account~~ because of ~~such~~ the violation.
- E. The provisions of this Section ~~shall apply beginning at the time in which the~~ from the date that a notice of hearing for a contested case proceeding is noticed for hearing is served, or at the time a notice of opportunity for hearing is issued ~~appealable agency action is served,~~ or a request for hearing is filed, whichever comes first, unless the person responsible for the communication has knowledge that ~~it~~ a proceeding will be noticed, in which case the prohibitions ~~shall~~ beginning at the time of the acquisition of such from the date that the individual acquired the knowledge.

R12-4-605. Standards for ~~revocation and denial of right to obtain license~~ Revocation, Suspension, or Denial of a License

- A. ~~Pursuant to~~ Under A.R.S. §§ 17-340 and 17-362, the Commission shall hold a hearing and may revoke, ~~or~~ suspend, or deny ~~all or any of the hunting, fishing, or and trapping license licenses of any person when that person for an individual who has been convicted of any of the following offenses:~~
1. Killing or wounding a big game animal during a closed season or possessing a big game animal taken during a closed season. Conviction for possession of ~~a road-kill animals or animals causing animal or an animal that was engaged in depredation shall not be~~ is not considered "possessing during a closed season" ~~relevant to~~ for the purposes of this subsection.
 2. Destroying, injuring, or molesting livestock, ~~growing crops, or damaging or destroying~~ personal property, notices or signboards, ~~or other improvements, or growing crops~~ while hunting, fishing, or trapping.
 3. Careless use of ~~firearms~~ a firearm while hunting, fishing, or trapping ~~which has resulted that results in the injury or death to of any person, when if the act of discharging the firearm was deliberate.~~
 4. Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.
 5. Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304.
 6. Unlawfully posting state or federal lands in violation of A.R.S. § 17-304(B).
- B. ~~Pursuant to A.R.S. § 17-340, the Commission may hold a hearing and may revoke or suspend all or any of the hunting, fishing and trapping licenses of any person when that person has been convicted of any of the following offenses: Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting fishing, or trapping license if the Department recommends revocation, suspension, or denial of the license for an individual convicted of any of the following offenses:~~
1. Unlawfully taking or possessing big game, ~~when there is convincing if sufficient evidence,~~ which may or may not have been introduced in the court proceeding, ~~to support~~ supports any of the following conclusions:
 - a. The big game was taken without a valid license or permit.
 - b. The unlawful taking was willful and deliberate ~~and not accidental.~~
 - c. The person in unlawful possession aided the unlawful taking or was, or should have been, aware that the taking was unlawful.
 2. Unlawfully taking or possessing small game or fish, ~~when there is convincing if sufficient evidence,~~ which may or may not have been introduced in the court proceeding, ~~to support~~ supports any of the following conclusions:

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- a. The taking was willful and deliberate.
- b. The possession was in excess of the lawful possession limit plus the daily bag limit.
- 3. Unlawfully taking ~~other~~ wildlife species, ~~when there is convincing if sufficient evidence,~~ which may or may not have been introduced in the court proceeding, indicates that the act of taking was willful and deliberate and showed disregard for the state wildlife laws.
- 4. Littering a public hunting or fishing area while taking wildlife, ~~when there is convincing if sufficient evidence,~~ which may or may not have been introduced in the court proceeding ~~that the amount of litter was substantial,~~ indicates that an individual littered the area, the amount of litter discarded was unreasonably large, and that the person individual convicted made no reasonable effort to dispose of the litter in a lawful manner.
- 5. Careless use of ~~firearms~~ a firearm while hunting, fishing, or trapping ~~which that~~ resulted in injury or death to any person, ~~when if~~ the act of discharging the firearm was not deliberate, but ~~when there is convincing sufficient evidence,~~ which may or may not have been introduced in the court proceeding, indicates that the careless use demonstrated wanton disregard for the safety of human life or property.
- 6. Any ~~other~~ violation for which a license can be revoked ~~pursuant to under~~ A.R.S. § 17-340, ~~when that if~~ the person has been convicted of ~~other~~ a revocable offenses offense within the past three years, ~~and that person's actions show disregard for the state's wildlife laws.~~
- 7. Violation of A.R.S. § 17-306 for unlawful possession of wildlife.
- C. ~~The Under~~ A.R.S. §§ 17-238, 17-362, 17-363, 17-364, and 17-340, if the Department has made a recommendation to the Commission for license revocation, the Commission ~~may shall~~ hold a hearing and may revoke ~~or suspend all or any of the hunting, fishing and trapping licenses of any person fur dealer, guide, taxidermy, or special license (as defined in R12-4-401) in any other case where license revocation is authorized by law.~~

R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

- A. The Director may commence ~~proceedings a proceeding~~ for the Commission to revoke, suspend or deny ~~the right to obtain~~ a license under A.R.S. §§ ~~17-238, 17-340, 17-362, 17-363, 17-364, 17-340 and R12-4-105~~ and R12-4-605. The Director may also commence ~~proceedings a proceeding~~ for civil damages under A.R.S. § 17-314.
- B. The Commission shall conduct ~~hearings a hearing~~ concerning ~~license revocations~~ revocation, suspension, or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. § 41-1061 et seq Title 41, Chapter 6, Article 10. ~~The respondents~~ A respondent shall limit ~~their~~ testimony to ~~any~~ facts that show why the license should not be revoked or denied. ~~Guilt or innocence of the violation charged~~ Because the Commission does not have the authority to consider or change the conviction, a respondent is not permitted to raise this shall not be an issue in the proceeding. The Commission ~~may also shall~~ permit a respondent to offer testimony or evidence relevant to the Commission's decision to order the recovery of civil damages or wildlife parts.
- C. ~~The respondent waives the right to be heard if the~~ If a respondent is not present at the does not appear for a hearing on the date scheduled, at the time; and location noticed, and no further opportunity to be heard will be is provided except, unless rehearing or review is granted under R12-4-607. If the respondent does not wish to attend the hearing, the respondent may submit written testimony to the Department before the hearing date designated in the Notice of Hearing required by A.R.S. § 17-340(D). The Commission shall ensure that written testimony received at the time of the hearing is read into the record at the hearing.
- D. The Commission shall base its decision on the officer's case report, a summary prepared by the Department, a certified copy of the court record, and any testimony presented at the hearing. ~~The With the notice of hearing required by A.R.S. § 17-340(D), the~~ Department shall supply the respondent with a copy of ~~all documents used by the~~ each document provided to the Commission for use in reaching its a decision.
- E. Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any hearing or deposition. Not later than 10 calendar days before the hearing or deposition, the party shall file a written application ~~setting forth that provides~~ the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time, and place of the hearing or deposition. The Commission chair ~~may has the authority to~~ issue the subpoenas.
 - 1. A party shall ~~serve have~~ a subpoena served as prescribed in the Arizona Rules of Civil Procedure, ~~Rules 4 and 5 Rule 45.~~ An employee of the Department may serve a subpoena at the request of the Commission chair.
 - 2. ~~Any A~~ party may request ~~amendment to a subpoena that a subpoena be amended~~ at any ~~given time prior to before the time deadline~~ provided in this Section for filing ~~an the application for a subpoena.~~ The party shall have the amended subpoena ~~shall be~~ served as provided in subsection (E)(1).
- F. A license revoked by the Commission is suspended ~~as of on~~ the date of the hearing, and revoked upon issuance of the findings of fact, conclusions of law, and order. If a ~~person respondent~~ appeals the Commission's order revoking a license, the license is revoked after all appeals have been completed. A denial of the right to obtain a license is effective for ~~the a~~ period not to exceed five years, as determined by the Commission, beginning on the date of the hearing.
- G. A license suspended by the Commission is suspended on the date of the hearing, and suspended upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order suspending a license, the

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license is suspended after all appeals have been completed. Under 17-340(A), a suspension of a license is effective for a period not to exceed five years, as determined by the Commission, beginning on the date of the hearing.

R12-4-607. Rehearing or Review of Commission Decisions

- A. For purposes of this Section the following terms apply:
1. "Contested case" and "party" are defined as provided in A.R.S. § 41-1001;
 2. "Appealable agency action" is defined as provided in A.R.S. § 41-1092(3).
- B. Except as provided in subsection (G), any party in a contested case or appealable agency action before the Commission may file a motion for rehearing or review within 30 calendar days after service of the final administrative decision. For purposes of this subsection a decision is served when personally delivered or mailed by certified mail to the party's last known residence or place of business. The party shall attach a supporting memorandum, specifying the grounds for the motion.
- C. A party may amend a motion for rehearing or review at any time before the Commission rules upon the motion. An opposing party has ~~40~~ 15 calendar days after service to respond to the motion or the amended motion. The Commission ~~may~~ has the authority to require ~~the filing of that the parties file~~ written briefs on any issue raised in a motion or response, and ~~may provide~~ allow for oral argument.
- D. The Commission ~~may~~ has the authority to grant rehearing or review for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the proceedings of the Commission, ~~its staff, its hearing officer, or the prevailing party,~~ or any order or abuse of discretion ~~which that~~ deprived the moving party of a fair hearing;
 2. Misconduct of the Commission, its staff, ~~its hearing officer~~ an administrative law judge, or the prevailing party;
 3. Accident or surprise ~~which that~~ could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence ~~which that~~ could not, with reasonable diligence, have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
 7. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- E. The Commission may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). The Commission's order modifying a decision or granting a rehearing shall specify the grounds for the order, and ~~the any~~ rehearing or review shall cover only those specified matters.
- F. Not later than ~~40~~ 15 calendar days, after a decision ~~is rendered~~, the Commission may ~~order grant~~ order a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion. ~~In either case the order modifying the decision or granting a rehearing shall specify the grounds for the order.~~
- G. When a motion for rehearing or review is based upon affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 10 calendar days after ~~such~~ service, serve opposing affidavits. The Commission may extend this period for no more than 20 calendar days for good cause shown or by written stipulation of the parties. The Commission ~~may~~ has the authority to permit reply affidavits.

R12-4-609. Commission Orders

- A. Except as provided in subsection (B):
1. At least 20 calendar days ~~prior to before~~ a meeting where the Commission will consider a Commission ~~order~~ Order, the Department shall ensure that a public meeting notice and agenda for the public meeting is posted in accordance with A.R.S. § 38-431.02. The Department shall also issue a public announcement notice of the proposed recommended Commission order Order to print and ~~electronics~~ electronic media ~~in accordance with A.R.S. § 38-431.02 at least 20 calendar days before the meeting.~~
 2. ~~The announcement~~ The Department shall ensure that the public meeting notice and agenda contains ~~contain~~ the date, time, and location of the Commission meeting where ~~these recommendations~~ the Commission Order will be considered and a statement that the public may attend and present written comments at or before the hearing meeting.
 3. ~~The Department announcement shall also state~~ also ensure that the public meeting notice and agenda states that ~~copies a copy of the proposed Commission Order is~~ orders will be available for public inspection at the Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 calendar days ~~prior to before~~ the meeting. The Commission may make changes to the recommended Commission Order at the Commission meeting.
- B. The requirements of subsection (A) do not apply to Commission orders establishing:
1. Supplemental hunts as prescribed in R12-4-115, and
 2. Special seasons for ~~persons possessing~~ individuals that possess special license tags issued under A.R.S. § 17-346 and R12-4-120.
- C. The Department shall publish the content of all Commission orders and make them available to the public without charge.

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**R12-4-610. Petition for Requesting Closure of Hunting, Fishing, or Trapping Privileges on State or Federal Lands
Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of
Motor Vehicles**

- A. Any ~~person~~ individual or agency requesting that the Commission consider closing state or federal land to hunting, fishing, or trapping ~~pursuant to under~~ R12-4-110 or A.R.S. § 17-304(B); ~~or closing roads or trails on state lands pursuant to under~~ R12-4-110, shall submit a petition as prescribed in this rule ~~Section~~ before ~~such a~~ the Commission will consider the request may be considered by the Commission.
- B. A petition shall not address more than one contiguous closure request.
- C. Once the Commission has considered and denied a petition, ~~a petition submitted~~ an individual who subsequently ~~which~~ submits a petition that addresses the same contiguous closure request shall ~~be accompanied by provide~~ provide a written statement ~~containing that contains~~ any reason not previously considered ~~which the petitioner believes should cause by~~ the Commission ~~to reconsider its in making a decision.~~
- D. The ~~petitioner shall file an~~ original and one copy of ~~a the~~ petition shall be filed with the Director of the Arizona Game and Fish Department, 2221 West Greenway, Phoenix, Arizona 85023. ~~A petition shall be filed, not less than 60 calendar days prior to before a scheduled Commission meeting in order to be considered by the Commission at placed on the agenda for that meeting. Petitions received If the Commission receives a petition after that time shall be submitted to the Commission at the following it will be considered at the next regularly-scheduled open meeting. The At any time, the petitioner may at any time withdraw the petition or request delay to a later regularly-scheduled open meeting.~~
- E. ~~Within 15 working days of a petition's filing, the Department shall determine whether the petition meets the requirements prescribed in this rule and R12-4-110.~~

1. ~~If the petition meets the requirements prescribed in this rule and R12-4-110, and alternate solutions cannot be found which are acceptable to the petitioner, the Department shall place the petition on the agenda of an open meeting of the Arizona Game and Fish Commission according to the schedule designated in subsection (D) of this rule. The petitioner shall have the right to present oral testimony in support of the petition at that meeting, according to the provisions of R12-4-603.~~

Within 15 business days after the petition is filed, the Department shall determine whether the petition complies with this Section, R12-4-110, and A.R.S. § 17-452. Once the Department determines that the petition meets these requirements, and if the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection (D), shall place the petition on the agenda for the Commission's next open meeting and provide written notice to the petitioner of the date that the Commission will consider the petition.

1. The petitioner may present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions of R12-4-603.
2. ~~If the petition does not meet the requirements prescribed in this rule and R12-4-110, the Department shall return one copy of the petition as filed to the petitioner with reasons why it does not meet the requirements. The Department shall not place the petition on an agenda of an open meeting with the Commission.~~
If a petition does not meet the requirements prescribed in this Section, R12-4-110, and A.R.S. § 17-452, the Department shall return one copy of the petition as filed to the petitioner with the reasons why the petition does not meet the requirements, and not place the petition on a Commission agenda.
3. If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 41-1092.03.
- ~~F. Petitions shall be submitted typewritten, double spaced, on 8 1/2 x 11" paper. A concise map with legal descriptions, showing the specific location of the proposed closure, shall accompany the typewritten petition. The title shall appear at the top of the first page and shall be "Petition for Closure to Hunting, Fishing or Trapping on State or Federal Land." The petition shall be in four parts, with headings designating each part as prescribed in subsections (G) through (J) of this rule.~~
- ~~G. Part 1 shall be headed "Identification of Petitioner."~~
1. ~~When the petitioner is the leaseholder of the area being proposed for closure, Part 1 shall contain the name, lease number, mailing address, and home telephone number of the petitioner.~~
2. ~~If the petitioner is anyone other than the leaseholder, Part 1 shall contain the name, mailing address, and telephone number of the leaseholder in addition to the name, mailing address and telephone number of the petitioner and shall list any private groups or organizations the petitioner may represent.~~
3. ~~If the petitioner is a public agency, Part 1 shall contain the name and address of the agency and the name, title, and telephone number of the agency's representative relative to the petition.~~
- ~~H. Part 2 shall be headed "Request for Closure." Part 2 shall contain the following:~~
1. ~~Designation of the type of closure requested: hunting, fishing, trapping, road closure, or locking or obliterating a gate.~~
2. ~~A complete legal description of the area to be closed.~~
3. ~~The name or identifying number of any road and the portion thereof affected by the closure to hunting, fishing, or trapping. If the request is for closure of a road or trail when no closure to hunting, fishing, or trapping is to be made, the petition shall designate the proposed alternate access route.~~
4. ~~The inclusive dates proposed for the closure or whether the request is for a permanent closure.~~

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5. ~~A general identification of any other valid licensees or permittees that will or may be affected by the closure.~~
- ~~I. Part 3 shall be headed "Reason for Closure." Part 3 shall contain the following:~~
 1. ~~The reason why the petitioner believes the closure should be considered, pursuant to R12-4-110.~~
 2. ~~Any data or other justification supporting the reasons for the closure with clear reference to any exhibits which may be attached to the petition.~~
 3. ~~An identification of what persons or segment of the public the petitioner believes would be impacted by the closure, and how they would be impacted, including both positive and negative implications.~~
 4. ~~If the petitioner is a public agency, Part 3 shall also contain a summary of issues raised in any public hearing relative to the petition and any written comments received by the petitioning agency.~~
- ~~J. Part 4 shall be headed "Dates and Signatures" and shall contain the following:~~
 1. ~~The original signature of the private party or the official contact named pursuant to subsection (G)(1) or (2) of this rule, or~~
 2. ~~If the petitioner is a public agency, the signature of the agency head.~~
 3. ~~The month, day, and year that person signed the petition.~~
- E. The petitioner shall submit a petition that:
 1. Is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced, on 8 1/2 x 11" paper;
 2. Has a concise map that shows the specific location of the proposed closure;
 3. Has the title "Petition for the Closure of Hunting, Fishing, or Trapping Privileges on Public Land" or "Petition for the Closure of Public Lands to the Operation of Motor Vehicles" at the top of the first page;
 4. Is in four parts, with titles designating each part as prescribed in this subsection;
 5. Has a "Part 1" with the title "Identification of Petitioner" and contains the following information, if applicable:
 - a. If the petitioner is the leaseholder of the area proposed for closure, the name, lease number, mailing address, and home telephone number of the petitioner;
 - b. If the petitioner is anyone other than the leaseholder, the name, mailing address, and telephone number of the leaseholder; the name, mailing address, and telephone number of the petitioner; and the name of each group or organization or organizations that the petitioner represents; or
 - c. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative regarding the petition.
 6. Has a "Part 2" with the title "Request for Closure" and contains all of the following information, if applicable:
 - a. The type of closure requested: either a hunting, fishing, or trapping closure, or closure to the operation of motor vehicles;
 - b. A complete legal description of the area to be closed;
 - c. The name or identifying number of any road and the portion of the road affected by the closure; and
 - d. The dates proposed for the closure:
 - i. If the closure is to the operation of motor vehicles, the actual time period of the closure (up to 5 years), and whether or not the closure is seasonal; or
 - ii. If the closure is for hunting, fishing, or trapping, whether or not the request is for a permanent closure or for some other period of time.
 7. Has a "Part 3" with the title "Reason for Closure" and contains all of the following information, if applicable:
 - a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);
 - b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition;
 - c. Each individual or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;
 - d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of each written comment or document of concurrence authorized under A.R.S. § 17-452(A), received by the petitioning agency; and
 - e. A proposed alternate access route, under R12-4-110.
 8. Has a "Part 4" with the title "Dates and Signatures" and contains the following:
 - a. The original signature of the private party or the official contact named under subsection (F)(5)(a) or (F)(5)(b) of this Section, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
 - b. The month, day, and year when the petition was signed.

R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

- A. If no administrative remedy exists in statute, rule or policy, an aggrieved individual may request a hearing before the Commission by following the provisions of this Section.**
- B. Any individual who requests a hearing under this Section shall submit a petition as prescribed in this Section before the request for a hearing will be considered by the Commission.**

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- C.** A petitioner shall file the original and one copy of the petition with the Arizona Game and Fish Department, Director's Office, 2221 W. Greenway Rd., Phoenix, Arizona 85023.
- D.** The petitioner shall ensure that the petition is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced on 8½" x 11" paper. The petitioner shall place the title "Petition for Hearing by the Arizona Game and Fish Commission" at the top of the first page. The petition shall include the items listed in subsections (E) through (H). The petitioner shall present the items in the petition in the order in which they are listed in this Section.
- E.** The petitioner shall ensure that the title of Part 1 is "Identification of Petitioner" and that Part 1 includes the following information, as applicable:
1. If the petitioner is a private person, the name, mailing address, telephone number, and e-mail address (if available) of the petitioner;
 2. If the petitioner is a private group or organization, the name and address of the organization; the name, mailing address, telephone number, and e-mail address (if available) of one person who is designated as the official contact for the group or organization; the number of individuals or members represented by the private group or organization, and the number of these individuals or members who are Arizona residents. If the petitioner prefers, the petitioner may provide the names and addresses of all members; or
 3. If the petitioner is a public agency, the name and address of the agency and the name, title, telephone number, and e-mail address (if available) of the agency's representative.
- F.** The petitioner shall ensure that the title of Part 2 is "Statement of Facts and Issues." Part 2 shall contain a description of the issue to be resolved, and a statement of the facts relevant to resolving the issue.
- G.** The petitioner shall ensure that the title of Part 3 is "Petitioner's Proposed Remedy." Part 3 shall contain a full and detailed explanation of the specific remedy the petitioner is seeking from the Commission.
- H.** The petitioner shall ensure that the title of Part 4 is "Date and Signatures." Part 4 shall contain:
1. The original signature of the private party or the official contact named in the petition, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
 2. The month, day, and year that the petition is signed.
- I.** If a petition does not comply with this Section, the Director shall return the petition and indicate why the petition is deficient.
- J.** After the Director receives a petition that complies with this Section, the Director shall place the petition on the agenda of a regularly-scheduled Commission meeting.
- K.** If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same matter, unless the petitioner presents new evidence or reasons for considering the subsequent petition.
- L.** This Section does not apply to the following:
1. A matter related to a license revocation or civil assessment; or
 2. An unsuccessful hunt permit-tag draw application, where there was no error on the part of the Department.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 21. CUSTOMER INFORMATION SECURITY PROGRAM

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| Article 21 | New Article |
| R20-6-2101 | New Section |
| R20-6-2102 | New Section |
| R20-6-2103 | New Section |
| R20-6-2104 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statute: A.R.S. § 20-143
- Implementing statutes: A.R.S. §§ 20-143 and 20-2121
- 3. The effective date of the rules:**
- July 13, 2004

Notices of Final Rulemaking

4. List all previous notices appearing in the register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 40, January 3, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 4915, November 14, 2003

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Margaret McClelland

Address: Arizona Department of Insurance
2910 North 44th Street, Second Floor
Phoenix, AZ 85018

Telephone: (602) 912-8456

Fax: (602) 912-8452

6. An explanation of the rules, including the agency's reasons for initiating the rules:

This Article is intended to establish standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information, under Sections 501, 505(b), and 507 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b), and 6807 (Gramm-Leach Bliley).

7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review the study, all data underlying each study, any analysis of each or study and other supporting material:

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business and consumer impact:

These rules carry out the data security mandates of the Gramm-Leach-Bliley Act (GLBA). GLBA requires the functional regulator for each financial service industry to establish appropriate standards relating to administrative, technical, and physical safeguards of customer records and information. The Department, as the functional regulator for insurance, proposes these rules to implement the federal mandates. The rules allow for flexibility and permit companies to adjust based on their own peculiar needs and systems. These rules adopt the model of the National Association of Insurance Commissioners. Adoption of the national model benefits multistate users who will not have to develop separate and differing systems for the many states in which they do business. Many insurers are already complying with the requirements of these rules as insurance information privacy laws have been in place for some time. A.R.S. § 20-2101 et seq.

These rules should result in a program that produces greater efficiency and improved methodology for keeping customer information secure. A more efficient security program could result in lower administrative costs for insurers, which could, in turn, be passed on to customers. Conversely, some licensees will incur costs for putting in place a customer information security program and those costs could be passed on to the customers. These impacts are the result of federal mandates, rather than state rules.

The consumers involved are those whose information is in records and databases of licensees, which is a considerable segment of the state's population. These rules should reduce the likelihood that a consumer's information will be accessed by those who have no legitimate authority, purpose, or use. A more efficient security program could result in lower administrative costs for insurers, which could, in turn, be passed on to consumers. A benefit to consumers includes the intangible comfort in knowing that a program is in place to protect the confidentiality and integrity of nonpublic personal information in the licensees' possession. However, the rules could result in a cost savings for consumers who will not have to incur costs to remedy damage from identity theft or other harm that can result from security breaches. It is unlikely that these rules, or any rules, will result in an absolutely foolproof program, but they can result in protection against anticipated threats or hazards to security or integrity of the information.

Small or large businesses engaged in the business of consulting or providing software or other products or services for protecting information could benefit as a result of receiving contracts from or selling products to licensees.

There will be a minimal economic impact on the Department for costs associated with the rulemaking process. The Department does not expect the rulemaking to have any economic impact on any other public agencies or political subdivisions.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The changes between the proposed rules and the final rule were made as a result of public comment. The underling indicates new text added since the proposed rules. The strike through indicates text that has been stricken since the proposed

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rules.

R20-6-2101:

1. "Consumer" means an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information, or that person's legal representative, and ~~includes~~ can include a prospective applicant, policyholder, certificateholder, insured, or claimant.
2. "Customer" means a consumer who has a continuing relationship with a licensee under which the licensee provides one or more insurance products or services to the consumer that are used primarily for personal, family, or household purposes.

Minor grammatical or stylistic changes were made at the request of the Governor's Regulatory Review Council staff.

11. A summary of comments made regarding the rule and the agency response to them:

The Department received no comments at the oral proceeding held on this rule, but the Department received two letters of written comment.

R20-6-2101

Comment: The Department received a letter in support of this rulemaking urging the Department to move forward with the rulemaking.

Response: The Department appreciates the letter of support for the rulemaking.

Comment: A commenter stated that the proposed rules do not uniformly track the definitions of "consumer" and "customer" in the NAIC model privacy regulation. The commenter suggested that the "customer" definition be revised to add the phrase "continuing (customer)" before "relationship."

Response: The Department agrees that the definition should be revised. The word "continuing" is added before "relationship".

Comment: A commenter suggested that R20-6-2101 be revised to change "includes" to "can include."

Response: The Department agrees with this comment. The phrase "and includes" is changed to "can include."

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rule:

None

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 21. CUSTOMER INFORMATION SECURITY PROGRAM

Section

R20-6-2101. Definitions

R20-6-2102. Customer Information Security Program

R20-6-2103. Objectives of Customer Information Security Program

R20-6-2104. Guidelines for Methods of Development and Implementation

ARTICLE 21. CUSTOMER INFORMATION SECURITY PROGRAM

R20-6-2101. Definitions

The following definitions apply in this Article:

1. "Consumer" means an individual, or the individual's legal representative, who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information. Consumer can include a prospective applicant, policyholder, certificateholder, insured, or claimant.

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2. "Customer" means a consumer who has a continuing relationship with a licensee under which the licensee provides one or more insurance products or services to the consumer that are used primarily for personal, family, or household purposes.
3. "Customer information" means nonpublic personal information and privileged information about a customer whether in paper, electronic, or other form, that is maintained by or on behalf of an insurance institution, insurance producer, or insurance support organization.
4. "Customer information systems" means the electronic, or physical methods used to access, collect, store, use, transmit, protect, or dispose of customer information.
5. "Insurance institution" has the meaning prescribed in A.R.S. § 20-2102(10).
6. "Insurance producer" means a person required to be licensed under A.R.S. Title 20, Chapter 2, Article 3 to sell, solicit, or negotiate insurance and includes a managing general agent as defined in A.R.S. § 20-311.
7. "Insurance support organization" has the meaning prescribed in A.R.S. § 20-2102(13).
8. "Licensee" means an insurance institution, insurance producer, or insurance support organization, but does not include a purchasing group or an unauthorized insurer in regard to the excess line business conducted under Title 20, Chapter 2, Article 5.
9. "Personal information" has the meaning prescribed in A.R.S. § 20-2102(19).
10. "Privileged information" has the meaning prescribed in A.R.S. § 20-2102(22).
11. "Service provider" means a person that maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a licensee.

R20-6-2102. Customer Information Security Program

A licensee shall implement a comprehensive written customer information security program that includes administrative, technical, and physical safeguards for the protection of customer information. The administrative, technical, and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

R20-6-2103. Objectives of Customer Information Security Program

A licensee's customer information security program shall be designed to:

1. Ensure the security and confidentiality of customer information;
2. Protect against any anticipated threats or hazards to the security or integrity of the information; and
3. Protect against unauthorized access to or use of the information.

R20-6-2104. Guidelines for Methods of Development and Implementation

A licensee may implement the requirements of R20-6-2102 and R20-6-2103 by the actions and procedures prescribed in this Section, which are non-exclusive illustrations:

1. A licensee may assess risk by:
 - a. Identifying reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems;
 - b. Assessing the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and
 - c. Assessing the sufficiency of policies, procedures, customer information systems, and other safeguards in place to control risks.
2. A licensee may manage and control risk by:
 - a. Designing its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;
 - b. Training staff to implement the licensee's information security program; and
 - c. Regularly testing or otherwise regularly monitoring the key controls, systems and procedures of the information security program. The licensee shall determine the frequency and nature of these tests or other monitoring practices by the licensee's risk assessment.
3. A licensee may oversee service provider arrangements by:
 - a. Exercising appropriate due diligence in selecting its service providers; and
 - b. Requiring its service providers to implement measures designed to meet the objectives of this Article, and, where indicated by the licensee's risk assessment, taking appropriate steps to confirm that its service providers have satisfied these obligations.
4. A licensee may monitor, evaluate, and adjust, as appropriate, its information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to customer information systems.